

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFERES - CORPORATION TAX BUREAU

In the Matter of the Applications of

MAGNA PICTURES CORPORATION

(Formerly Magna Theatre Corporation)

Hearing Case No. 2826

for revision or refund of franchise
taxes under Article 9A of the Tax Law
for the fiscal years ended January 31,
1960 and 1961.

The taxes were audited and stated on August 18, 1961 and February 9, 1962. Applications for revision or refund were filed on August 14, 1963.

Question involved: Right of taxpayer to a business allocation.

The taxpayer computed and paid the following taxes:

January 31, 1960

Business Income (\$824,602.53) x 100% N.Y.	\$824,602.53
Investment Income (\$116,086.72) x 18.02% N.Y.	20,918.83
Total allocated income	\$845,521.36
Tax at 5 1/2%	46,503.67
Plus Subsidiary Capital Tax	47.26
Total Tax	\$ 46,550.93

January 31, 1961

Business Capital (\$1,982,662) x 100% N.Y.	\$1,982,662.00
Investment Capital (\$3,342,102) x 20.3% N.Y.	678,447.00
Total allocated capital	\$2,661,109.00
Tax at 1 Mill	2,661.11
Plus Subsidiary Capital Tax	52.30
Total Tax	\$ 2,713.41

An informal hearing was held in Albany on January 25, 1965 before William F. Sullivan, Conferee, with the taxpayer being represented by Mr. A. E. Bollengier, Treasurer, and Mr. John Brundage and Mr. John R. Thornton of Lybrand, Ross Bros. & Montgomery, 2 Broadway, New York, N.Y.

The applications, testimony taken, and additional information furnished, indicate the following:

Magna Pictures Corporation (formerly Magna Theatre Corporation) (herein called the company), was incorporated in the state of Delaware in 1952. The company is engaged as a producer and distributor of motion pictures throughout the world. The company's principal activity to date has been the financing and distribution of two feature films, "Oklahoma" and "South Pacific." Distribution of "Oklahoma" and "South Pacific" has

Approved
(2 cases)
JAMES R. MACDUFF
5/5/65

Approved
IRA J. PALESTIN
5/10/65

generally operated in two ways. The Todd-AO versions of these motion pictures have been distributed by the company through its own representatives while distribution of the Cinemascope versions of these motion pictures has been subcontracted, by the company, to Twentieth Century-Fox Film Corporation (herein called TCFFC). The agreements with TCFFC provide for TCFFC to receive a percentage of the gross rentals after deducting certain distribution costs such as advertising, etc.

The company, in conjunction with its film distribution rights, makes film prints from a negative. These prints are stored in film storage lockers throughout the world. The prints, when rented for a showing, are delivered to the theatre from the film storage locker and upon completion of the rental period are returned to the storage locker. The company contends that it has income producing properties stored outside the state of New York and that these storage locations constitute regular places of business as defined in regulation section 4.11 of Article 9A of the New York State law.

In addition to having regular places of business located outside of New York State the company has had a permanent place of business located in London, England since 1959. This office is occupied by a vice president who handles the entire distribution in Great Britain, of the company's motion pictures "South Pacific" and "Oklahoma."

We agree with the taxpayer that the location of its film prints in storage lockers throughout the world constitutes "regular places of business" under Section 4.11 of Ruling of State Tax Commission, and it is, therefore, entitled to a business allocation.

At the hearing and in information subsequently submitted, the taxpayer has verified to our satisfaction the business allocation claimed on the rider attached to forms CT-7.

This Board recommends that the taxes be corrected as follows:

January 31, 1960

Business Income	\$824,631.52 x 39.19% N.Y.	=	\$323,173.09
Investment Income	\$116,086.72 x 18.02% N.Y.	=	<u>20,918.83</u>
Total Allocated Income			\$344,091.92
Tax at 5½%			18,924.43
Subsidiary Capital Tax			47.26
Total Tax			\$ 18,971.69
Original Tax			46,550.93
Credit			\$ 27,579.24

January 31, 1961

Business Income	\$548,130.08 x 33.98% N.Y.	=	\$186,254.60
Investment Income	171,600.00 x 20.3% N.Y.	=	<u>34,834.80</u>
Total Allocated Income			\$221,089.40
Tax at 5½%			12,159.92
Subsidiary Capital Tax			52.30
Total Tax			12,212.22
Original Tax			2,738.41
Balance Due			\$ 9,498.81

The increase in tax in the above assessment is due to a Federal change in net income as reported on the report for the fiscal year ended January 31, 1964.

January 31, 1962

Business Income	\$ 98,726.97 x 29.82% N.Y.	=	\$29,440.38
Investment Income	165,647.94 x 08.154% N.Y.	=	<u>13,506.23</u>
Total Allocated Income			\$42,947.31
Tax at 54%			2,362.10
Subsidiary Capital Tax			59.22
Total Tax			<u>2,421.32</u>
Remittances with tentative report			12,750.00
Credit			\$10,328.60

/s/

WILLIAM F. SULLIVAN

Chairman

/s/

D. H. GILHOOLY

WFS:MB

April 21, 1963